IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11185 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAJESH @ KALU GANPATSINH SODHA(PARMAR)

Versus

STATE OF GUJARAT AND OTHERS

==========

Appearance :
MR VAIBHAV A VYAS for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 20/07/2006

ORAL JUDGMENT

By filing the present petition, the petitioner-detenu has challenged his detention order dated 16/02/06 by which he is detained as a 'dangerous person' under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to 5 criminal cases pending against the detenu for offences punishable under sections 454, 457, 380, 114 etc. of the Indian Penal Code. It is alleged that the detenu has committed theft of various articles. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public order, and, therefore has detained the petitioner as a 'dangerous person'.

Mr. Vyas, learned advocate for the petitioner submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in A.J.Solanki V. Police Commissioner, Surat reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs.”

Learned advocate for the petitioner further submitted that the detaining authority has stated in the grounds of detention that the petitioner at the relevant time was under judicial custody, but the petitioner is likely to move an application for bail at any point of time, and after being released on bail, he may again continue with the said activities. Learned advocate for the petitioner further submitted that the detaining authority has not given any reasons as to on what basis and material it has come to the conclusion that the

petitioner may move an application for bail at any point of time and after being released on bail, he may continue with the same activities. He further submitted that looking to the repeated offences alleged against the petitioner, it is not possible to believe that the petitioner will be automatically released on bail on presentation of the application.

Learned advocate for the petitioner has relied on a recent decision of the Honourable Supreme Court in the case of T.V. SRAVANAN vs. STATE reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> "13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).
>
> > ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the detaining

> authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).""

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not

sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

Learned Assistant Government Pleader is not in a position to point out any documents as to on what basis and material the detaining authority has come to the aforesaid conclusion.

It is true that the detaining authority has not stated as to on what basis he has reached a subjective satisfaction that the petitioner, on presentation of the application for bail, will be released on bail. As a matter of fact there are as many as 5 criminal cases registered against the detenu, and these are not the cases in which one may draw a presumption that bail will be granted as a matter of course, especially when the detenu has not even applied for bail. The detaining authority has not indicated as to on what material he has relied upon for arriving at the aforesaid subjective satisfaction. On this ground, the subjective satisfaction arrived at by the detaining authority is vitiated as without disclosing any material and without any basis, such an inference is drawn. There is no credible material on record to arrive at such an inference.

In the result, this petition is allowed. Order of detention passed against the detenu dated 16.02.06 is quashed and set aside. The detenu: RAJESH @ KALU GANPATSINH SODHA(PARMAR) is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary

statement that even if the detenue is released on bail, the detenu will not enter the limits of Ahmedabad Police Commissionerate area upto 31st January 2007 except for attending the criminal case. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

mathew